



## DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2021-0005]

Elizabeth River, Naval Station Norfolk Deperming Station, Norfolk, VA; Restricted Area.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing a restricted area in the waters of the Elizabeth River surrounding the Naval Station Norfolk (NSN) Lambert's Point Deperming Station in Norfolk, Virginia. Naval Station Norfolk is the home port of numerous ships and its facilities provide operational readiness support to the U.S. Atlantic Fleet. The deperming station is located within the waters of the Elizabeth River and it provides magnetic silencing services for military vessels. This deperming station is the only location capable of servicing an aircraft carrier and the only deperming facility on the east coast of the United States. The restricted area is necessary to protect underwater equipment, personnel, and vessels utilizing the facility by implementing a waterside security program. The regulation establishes the restricted area in waters surrounding the existing facility immediately adjacent to the channel into Norfolk Harbor.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David Olson), 441 G Street NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922 or via e-mail at david.b.olson@usace.army.mil.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the October 8, 2021, edition of the Federal Register (86 FR 56236) and the regulations.gov docket number was COE-2021-0005. In response to the proposed rule, five comments were received.

One commenter said that no natural heritage resources, potential habitat for natural heritage resources, or state natural area preserves under the Virginia Department of Conservation and Recreation's jurisdiction were identified in the vicinity of the proposed restricted area. They also stated that the current activity will not affect any documented state-listed plants or insects. Another commenter stated that the proposed rule does not include any activities that will disturb Chesapeake Bay Preservation Areas. Therefore, no Chesapeake Bay Preservation Act requirements are relevant to the establishment of the restricted area. One commenter said that no public groundwater wells are located within one mile of the proposed restricted area and no surface water intakes are located within five miles of the proposed restricted area. This commenter also stated that the proposed restricted area is also not within the watershed of any public surface water intakes and there are no apparent impacts to public drinking water sources due to the establishment of this restricted area. Another commenter said that the proposed restricted area is outside of their agency's jurisdictional areas and they will not require a permit for the establishment of the restricted area.

One commenter expressed support for amending the federal regulations to include a restricted area around Lambert's Point Deperming Station. They said that the work performed at the deperming station is critical to the safety of the

U.S. Naval Fleet, and the proposed restricted area is essential for its protection. This commenter referenced several federal regulations to support the Corps' authority and process to establish restricted areas to protect government assets, and stated that no further evaluation was warranted.

In response to a request by the United States Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending its regulations at 33 CFR Part 334 to add a permanent restricted area in the waters of the Elizabeth River surrounding the Naval Station Norfolk Lambert's Point Deperming Station in Norfolk, Virginia.

#### Procedural Requirements

a. Regulatory Planning and Review. This final rule is not a "significant regulatory action" under Executive Order 12866 (58 FR 51735, October 4, 1993) and it was not submitted to the Office of Management and Budget for review.

b. Review Under the Regulatory Flexibility Act. This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments).

The Corps certifies under 5 U.S.C. 605(b) that this final rule would not have a significant economic impact on a substantial number of small entities. The restricted area is necessary for security of the deperming station. The restricted area is also necessary to protect underwater equipment, personnel, and vessels utilizing the facility by implementing a waterside security program. Small entities

can utilize navigable waters outside of the restricted area. Only vessels authorized by the Commanding Officer, U.S. Naval Station, Norfolk, Virginia and/or other persons or agencies that he/she may designate may enter the restricted area, and some of these vessels may be operated by small entities.

This determination is based on the rules governing the restricted area, including the ability for vessel operators to obtain permission from the Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and/or other persons or agencies as he/she may designate, to transit the restricted area. The Corps expects that the economic impact of the restricted area would have practically no impact on the public, any anticipated navigational hazard, or interference with existing waterway traffic. After considering the economic impacts of this restricted area regulation on small entities, I certify that this final rule would not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps has determined that the establishment of this restricted area regulation will not have a significant impact to the quality of the human environment and, therefore, the preparation of an environmental impact statement is not required. An environmental assessment has been prepared for this final rule. It may be reviewed at the Norfolk District office at 803 Front Street, Norfolk, Virginia 23510.

d. Unfunded Mandates Act.

This final rule does not impose an enforceable duty among the private sector and, therefore, it is not a federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded

Mandates Act. The Corps has also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rule.

### **List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

### **PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.296 to read as follows:

#### **§ 334.296 Elizabeth River, Deperming Station, Norfolk, VA, Restricted Area.**

(a) *The area.* The waters within an area beginning at a point latitude 36°51'52" N, longitude 76°20'04" W; thence easterly to a point at latitude 36°51'52" N, longitude 76°19'49" W, thence northerly to latitude 36°52'06" N, longitude 76°19'48" W; thence northwesterly to latitude 36°52'12" N, longitude 76°19'57" W; thence northwesterly to a point at latitude 36°52'15" N, longitude 76°19'59" W; thence westerly to latitude 36°52'15" N, longitude 76°20'04" W, thence to the point of origin. The datum for these coordinates is WGS-84.

(b) *The regulations.* (1) No vessels other than vessels of the U.S. armed forces and other authorized vessels shall enter the restricted area. Other authorized vessels include vessels and personnel, including contractors and agents, acting on behalf of any federal or state agency or department performing specific work authorized as part of that agency's or department's statutory missions or to enforce their respective laws. Authorized vessels may enter

anywhere in the restricted area at any time in the furtherance of their authorized operations. This includes, but is not limited to, vessels that are engaged in the following operations: law enforcement, servicing aids to navigation, and/or surveying, maintenance, or improvement of the federal navigational channel.

(2) There shall be no introduction of external magnetic field sources within the area.

(3) No person or vessel shall at any time, under any circumstances, anchor or fish or tow a drag of any kind in the restricted area due to the risk of damage to mission essential underwater equipment including an extensive cable system located therein.

(4) Orders and instructions issued by U.S. Navy patrol craft or other authorized representatives of the enforcing agency shall be carried out promptly by persons or vessels in or in the vicinity of the restricted area.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Station, Norfolk, Virginia and such agencies as he/she may designate.

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Thomas P. Smith, P.E.

Chief, Operations and Regulatory Division

Directorate of Civil Works

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